

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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KEVIN BARRETO and ANA BARRETO,

Plaintiffs,

Case No.: 2:22-cv-5127

-against-

SOUTH SHORE NISSAN LLC, and NISSAN MOTOR
ACCEPTANCE COMPANY LLC

**ANSWER TO
COMPLAINT**

Defendants.

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Defendant, Nissan Motor Acceptance Company, LLC (“NMAC”), by and through its attorneys, McGlinchey Stafford PLLC, pursuant to Rule 7 of the Federal Rules of Civil Procedure (“FRCP”), as and for its Answer, in response to the “Complaint” filed August 29, 2022 (the “Complaint”), of plaintiffs, Kevin Barreto and Ana Barreto (the “Plaintiffs”), hereby alleges, upon information and belief, as follows:

GENERAL DENIAL

1. Pursuant to FRCP Rule 8, NMAC denies, both generally and specifically, each and every allegation and cause of action in the Complaint. NMAC further denies that Plaintiff is entitled to the relief requested in the Complaint, or that Plaintiff has been or will be damaged in any sum, or at all, by reason of any act or omission on the part of NMAC, or any of its past or present agents, representatives, or employees.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

2. The Complaint fails to state a legally cognizable claim or cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

3. Plaintiffs' causes of action are barred, in whole or in part, for lack of standing.

THIRD AFFIRMATIVE DEFENSE

4. Plaintiffs' causes of action are barred, in whole or in part, by the statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

5. Plaintiffs' causes of action are barred, in whole or in part, by documentary evidence.

FIFTH AFFIRMATIVE DEFENSE

6. Plaintiffs' causes of action are barred, in whole or in part, because NMAC complied with all applicable laws, regulations and standards.

SIXTH AFFIRMATIVE DEFENSE

7. All conduct engaged in by NMAC concerning or affecting Plaintiffs' Vehicle was reasonable, justified, and/or otherwise legally authorized.

SEVENTH AFFIRMATIVE DEFENSE

8. Plaintiffs' claims are barred, in whole or in part, because NMAC did not breach a duty owed to Plaintiff, contractual, statutory, or otherwise.

EIGHTH AFFIRMATIVE DEFENSE

9. Plaintiffs' claims are barred, in whole or in part, because Plaintiff fails to state a claim based upon purported violations of the FDCPA as NMAC did not engage in any deceptive acts or practices or make any false, deceptive, or misleading statements with respect to Plaintiffs.

NINTH AFFIRMATIVE DEFENSE

10. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs fail to state a claim based upon purported violations of the Consumer Leasing Act to the extent that NMAC's communications to Plaintiffs, if any, related to the subject lease were accurate.

TENTH AFFIRMATIVE DEFENSE

11. Plaintiffs' claims are barred because NMAC did not violate the New York Leasing Act.

ELEVENTH AFFIRMATIVE DEFENSE

12. Plaintiffs' claims fail to state a claim for false advertising to the extent that NMAC did not make any representations to Plaintiffs which were materially misleading.

TWELFTH AFFIRMATIVE DEFENSE

13. Plaintiffs failed to plead a claim for fraud with sufficient particularity as required under FRCP Rule 9.

THIRTEENTH AFFIRMATIVE DEFENSE

14. Plaintiffs have *not* alleged or sustained any damages that were caused by NMAC, or for which NMAC is, or could be, legally responsible.

FOURTEENTH AFFIRMATIVE DEFENSE

15. Plaintiffs fail to state a claim for damages, including statutory damages, actual damages, punitive damages, liquidated damages, emotional damages, attorneys' fees, costs, disbursements, and/or expenses.

FIFTEENTH AFFIRMATIVE DEFENSE

16. Any damages sustained by Plaintiffs are the result of Plaintiffs' own acts and/or omissions, and/or the acts and/or omissions of third parties not under NMAC's control.

SIXTEENTH AFFIRMATIVE DEFENSE

17. Plaintiffs fail to state a claim for damages by reason of his failure to mitigate, obviate, diminish or otherwise act to lessen or reduce his damages, if any.

SEVENTEENTH AFFIRMATIVE DEFENSE

18. Plaintiffs' claims are barred, in whole or in part, by the doctrines of unclean hands, laches, waiver, and/or estoppel.

EIGHTEENTH AFFIRMATIVE DEFENSE

19. Plaintiffs acquiesced in, consented to and/or ratified the acts and omissions alleged in the Complaint.

NINETEENTH AFFIRMATIVE DEFENSE

20. Plaintiffs are not entitled to any relief because they did not suffer any damages as a result of NMAC's actions.

TWENTIETH AFFIRMATIVE DEFENSE

21. Plaintiffs' claims against NMAC are barred by Plaintiffs' conduct that amounts to a waiver of any right or rights that Plaintiffs may or might have in relation to the causes of action alleged in the Complaint as against NMAC.

TWENTY-FIRST AFFIRMATIVE DEFENSE

22. NMAC hereby gives notice that it intends to rely upon any other and additional defenses that are now or may become available during, or as a result of, any discovery conducted in this proceeding, and hereby reserves its right to amend and/or supplement this Verified Answer to assert such defenses. NMAC expressly reserves the right to assert any additional defenses that it may discover during the course of litigation.

WHEREFORE NMAC respectfully request that the Court dismiss Plaintiffs' Complaint against NMAC with prejudice and grant such other and further relief as is just, proper and necessary.

MCGLINCHEY STAFFORD

Dated: January 10, 2023
New York, New York

By: /s/Matthew J. Gordon
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To:

Via CM/ECF

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CERTIFICATE OF SERVICE

I, Matthew J. Gordon certify under penalty of perjury that I am over 18 years of age, am not a party to the above-captioned action, and that on January 10, 2023, I caused a true and correct copy of the within Answer to be served on counsel of record by electronic service through the Court's CM/ECF system. Notice of this filing will be sent to the parties of record by operation of the Court's electronic filing system.

/s/Matthew J. Gordon
Matthew J. Gordon, Esq.